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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER MARINO, individually, and on
behalf of those similarly situated,

Plaintiff,

v.

YUMMYEARTH, INC.,

Defendant.

Case No. 3:22-cv-02739-VC

JOINT CASE MANAGEMENT STATEMENT

Date: November 30, 2022
Time: 1:00 p.m.
Courtroom: 4, 17th Floor
Judge: Hon. Vince Chhabria

JOINT CASE MANAGEMENT STATEMENT

Plaintiff Jennifer Marino and Defendant YummyEarth, Inc., (collectively, the "Parties")
hereby submit their Joint Case Management Statement pursuant to Federal Rules of Civil Procedure

26(f), Civil Local Rule 16-9, and the Standing Order for All Judges of the Northern District of California.

1. JURISDICTION AND SERVICE

There are no disputed issues regarding personal jurisdiction or venue in this matter, and service is complete.

Plaintiff's Position:

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because, if a class is certified, there will be more than 100 class members and the aggregate amount in controversy will exceed \$5,000,000, exclusive of interest, fees, and costs, and at least one member of the class will be a citizen of a state different from Defendant.

Defendant's Position:

Yummy Earth, Inc. ("YumEarth") contests that any class can be certified in this action.

2. FACTS

Plaintiff's Statement

Plaintiff and millions of Class Members purchased Defendant's Products after strolling through the store aisle and relying upon Defendant's prominent fruit representations. Instead of receiving a snack containing real fruit from the fruits depicted and referenced on the Products' packaging, Plaintiff and Class Members received Products devoid of real fruit and packed with high levels of sugar.

Ms. Marino filed the Complaint on May 8, 2022 (Dkt. 1) ("Complaint") on behalf of herself and those similarly situated. This action is brought against Defendant for violations of consumer protection and warranty laws from Defendant's false, deceptive, and unlawful marketing and sales of the Products.

Defendant's Statement

For over 15 years, YumEarth has made organic and allergy-friendly candy colored with fruit and vegetable juices, instead of artificial ingredients. YumEarth's line of organic candy includes fruit snacks, which are fruit-shaped, fruit-flavored, jellybean-like candies that are colored with fruit and vegetable juice concentrate. YumEarth's product labels comply with all applicable

1 federal and state food labeling regulations.

2 Plaintiff is a captive litigant whose lawyers have iteratively filed the same copy-and-paste
3 complaint. She brings this “false advertising” case without pointing to any statement that is false.
4 She alleges that she was misled into buying YumEarth’s candy because she thought it contained
5 fruit. She claims that she relied on the grinning pieces of cartoon fruit on the label, the images of
6 the fruit-shaped candy, and the name “fruit snacks” to form this belief, all the while ignoring the
7 most obvious way to know the ingredients—reading the ingredients. Plaintiff did not believe that
8 the candy contained material amounts of fruit. The product actually contains fruit, and, in any
9 event, the amount of fruit that can fit in a jellybean did not drive Plaintiff’s purchasing decision.

10 **3. Legal Issues**

11 Plaintiff’s Position

12 Plaintiff has suffered injuries from Defendant’s unlawful, unfair, deceptive, and fraudulent
13 conduct that are properly resolved before this Court. Additionally, this action satisfies all the
14 requirements of class certification under Rule 23.

15 On behalf of the California Class, Plaintiff alleges that Defendant has violated the UCL, the
16 FAL, and the CLRA. In addition, on behalf of the Nationwide Class, Plaintiff alleges breach of
17 express and implied warranties in connection with the sale of consumer goods. Additionally, on
18 behalf of the Nationwide Class, Plaintiff makes claims for unjust enrichment.

19 Defendant’s Position

20 Plaintiff’s complaint alleges causes of action under California’s Unfair Competition Law
21 (“UCL”), California’s False Advertising Law (“FAL”), California’s Consumer Legal Remedies
22 Act (“CLRA”), Breach of Express Warranty, Breach of Implied Warranty of Merchantability, and
23 Unjust Enrichment. There are legal issues regarding Plaintiff’s standing, reliance, injury, and class
24 certification. The disputes in this action will include whether Plaintiff can prove any of the
25 substantive elements of her claims, whether she has suffered any injury, and whether a class of
26 consumers all bought any of YumEarth’s delicious, organic candy products because each one of
27 them uniformly relied on some statement that was supposedly untrue.
28

1 **4. Motions**

2 Defendant's Motion to Dismiss was filed on July 22, 2022 (Dkt. No. 18). The Court denied
3 the motion on November 3, 2022 (Dkt. No. 33). There are no motions currently pending in this
4 matter. YumEarth anticipates filing a motion for summary judgment.

5 In addition to any discovery motions the Parties may bring, Plaintiff anticipates that she will
6 file a motion for class certification at the end of the fact discovery period, and both Parties anticipate
7 they may file motions for partial or complete summary judgment. The Parties may also file Daubert
8 motions, depending on the Parties' expert disclosures.

9 **5. Amendment of Pleadings**

10 Plaintiff's Position

11 Amendment of the pleading, if any, shall be completed no later than February 28, 2023.

12 Defendant's Position

13 No further amendment of the pleadings should be permitted.

14 **6. Evidence Preservation**

15 The Parties and their attorneys are aware of and are taking reasonable steps to comply with
16 their evidence preservation obligations under the Federal Rules of Civil Procedure, including
17 through the implementation of a litigation hold for all pertinent employees currently deemed likely
18 to have relevant documents in their possession.

19 **7. Disclosures**

20 Per the Parties' agreement, the Parties will exchange initial disclosures pursuant to Fed. R.
21 Civ. P. 26(a)(1)(A) no later than December 30, 2022.

22 **8. Discovery**

23 The Parties have not yet served discovery. The Parties will promptly meet and confer
24 regarding the scope of discovery and pursuant to the Northern District's Guidelines for the
25 Discovery of Electronically Stored Information. The Parties will also discuss entry of a Stipulated
26 Protective Order at that time, given that, should this action proceed in this Court, the Parties
27 anticipate it will likely involve the production of confidential information. The Parties believe that
28 the limits on discovery set by the Federal Rules of Civil Procedure are appropriate for this case.

1 Plaintiff's Statement

2 Plaintiff will propound document requests, interrogatories, and requests for admission.
3 Plaintiff will also depose corporate representatives of Defendant pursuant to Federal Civil
4 Procedure Rule 30(b)(6) as well as employees of Defendant in their individual capacity. Plaintiff
5 will also depose any experts that Defendant will use in this matter. The subjects of Plaintiff's
6 discovery may include, among other subjects, the sales, marketing, and manufacturing of the
7 Products.

8 Defendant's Statement

9 YumEarth intends to depose Plaintiff, third parties, and, if necessary, any experts that
10 Plaintiff uses in this action. YumEarth also intends to propound written discovery.

11 **9. Class Actions**

12 Plaintiff proposes that Plaintiff file the motion for class certification no later than July 10,
13 2023. Plaintiff further proposes a briefing schedule where Defendant will file its opposition within
14 30 days of this date and Plaintiff will file her reply 30 days thereafter.

15 YumEarth proposes the schedule set forth in section 17 below.

16 The Parties have reviewed the Procedural Guidance for Class Action Settlements.

17 **10. Related Cases**

18 There are no related cases to this action.

19 **11. Relief**

20 Plaintiff's Statement

21 Plaintiff seeks both monetary and injunctive relief. Plaintiffs intend to utilize damage
22 experts to determine the amount of relief.

24 Defendant's Statement

25 YumEarth denies that Plaintiff has been harmed or damaged in any amount and denies
26 that Plaintiff is entitled to any relief whatsoever.

27 **12. Settlement and ADR**

28 The Parties have met and conferred regarding ADR possibilities and have filed their ADR

Certifications (Dkt. No. 19.) The Parties have not yet stipulated to an ADR process, but will revisit these discussions as the case develops. Given that the Parties have not yet stipulated to an ADR process, the Parties indicated on their ADR Certifications that they are willing to discuss ADR selection with the Court during the Case Management Conference in this matter, should the Court so desire.

YumEarth's preferred method of ADR is use of a mediator from the Northern District of California's Mediation Program after fact discovery has closed.

Plaintiff's preferred method of ADR is use of a mutually agreed upon mediator and proposes that mediation occur during the later stages of fact discovery.

13. Consent to a Magistrate Judge for All Purposes

The Parties did not jointly consent to Magistrate Judge jurisdiction. (Dkt. No. 14.)

14. Other References

The Parties do not believe that it is suitable for reference to any other tribunal or judge at this time.

15. Narrowing of the Issues

The Parties do not believe any issue can be narrowed at this time.

16. Expedited Trial Procedure

The Parties do not believe that this matter is appropriate for Expedited Trial Procedure.

17. Scheduling

Plaintiffs' Position:

DEADLINE TO AMEND PLEADINGS:	February 28, 2023
CLASS CERTIFICATION FACT DISCOVERY CUTOFF:	July 10, 2023
FACTUAL DISCOVERY CUTOFF:	Three months after the court's decision on the Class Certification motion.
CLASS CERTIFICATION EXPERT DISCLOSURES:	July 10, 2023
CLASS CERTIFICATION REBUTTAL EXPERT DISCLOSURES:	30 days after Class Certification motion.

CLASS CERTIFICATION EXPERT DISCOVERY CUTOFF:	23 days after Defendant's Opposition to Class Certification.
NON-CLASS MERITS EXPERTS DISCOVERY:	To be determined after the court's decision on the Class Certification motion.
CLASS CERTIFICATION MOTIONS:	July 10, 2023
OPPOSITION BRIEFS:	30 days thereafter.
REPLY BRIEFS:	30 days thereafter.
DEADLINE FOR DISPOSITIVE MOTIONS:	To be determined after the court's decision on the Class Certification motion.
JOINT PRETRIAL ORDER:	To be determined after the court's decision on the Class Certification motion.
FINAL PRETRIAL CONFERENCE:	To be determined after the court's decision on the Class Certification motion.
TRIAL:	To be determined.

Defendant's Position:

Event	Date
Fact discovery cut off	July 3, 2023
Deadline to file class certification motion	July 10, 2023
Class certification opposition	August 21, 2023
Class certification reply	September 18, 2023
Class certification hearing	October 2, 2023
Deadline for expert reports	October 30, 2023
Rebuttal expert reports	November 17, 2023
Close of expert discovery	December 11, 2023
Deadline for dispositive motions	January 16, 2024
Joint pretrial conference order	To be determined after dispositive motions decided
Final pretrial conference	Three months after dispositive motions decided
Trial	Two weeks after pretrial conference

18. Trial

Plaintiff has demanded a jury trial on all matters so triable. However, until a class is certified and the scope of triable issues is narrowed, if any, the Parties believe that it is premature to assess potential trial length at this time.

19. Disclosure of Non-Party Interested Entities

The Parties will file their Certification of Interested Entities or Persons.

Plaintiff's Statement

Pursuant to Civil Local Rule 3-15 and Fed. R. Civ. P. Rule 7.1, Plaintiff will file a Certification of Interested Entities or Persons.

Defendant's Statement

Pursuant to Civil Local Rule 3-15 and Fed. R. Civ. P. Rule 7.1, YumEarth will file a Certification of Interested Entities or Persons.

20. Professional Conduct

All attorneys of record for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other

The Parties do not anticipate any other matters at this time.

Dated: November 23, 2022

BRAUNHAGEY & BORDEN LLP

/s/ Tracy O. Zinsou

Tracy O. Zinsou
Attorneys for Defendant

1 Dated: November 23, 2022

GOOD GUSTAFSON AUMAIS LLP

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3 /s/ John Ryan Gustafson

4 John Ryan Gustafson (220802)
5 Attorneys for Plaintiff
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